



Ralph E. Jocke
Patent
&
Trademark Law

8-12-05
Walker & Jocke
a legal professional association

AF/123 2613
#27
8-23-05
P.2.

RECEIVED

AUG 17 2005

Technology Center 2600

August 9, 2005

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attn: Art Unit 2613
Patent Examiner Tung T. Vo

Re: **Application No.:** 08/889,033
Appeal No.: 2004-1711
Confirmation No.: 2912
Appellants: Bartholomew J. Frazzitta, et al.
Title: Transaction System
Docket No.: D-1083

Sir:

Please find enclosed Appellants' acknowledgment of the decision dated July 21, 2005 for filing in the above identified Application.

Very truly yours,

Ralph E. Jocke
Reg. No. 31,029

CERTIFICATE OF MAILING BY EXPRESS MAIL

I hereby certify that this document and the documents indicated as enclosed herewith are being deposited with the U.S. Postal Service as Express Mail Post Office to addressee in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 this 10th day of August 2005.

EV731580410US
Express Mail Label No.

Ralph E. Jocke

330 • 721 • 0000
MEDINA

330 • 225 • 1669
CLEVELAND

330 • 722 • 6446
FACSIMILE

rej@walkerandjocke.com
E-MAIL

231 South Broadway, Medina, Ohio U.S.A. 44256-2601



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)	
Bartholomew J. Frazzitta, et al.)	
)	
Application No.: 08/889,033)	
)	Art Unit 2613
Appeal No.: 2004-1711)	
)	
Confirmation No.: 2912)	
)	Patent Examiner
Filed: July 7, 1997)	Tung T. Vo
)	
Title: Transaction System)	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the decision dated July 21, 2005 by the Board of Patent Appeals and Interferences, kindly enter Appellants comments in the above identified Application without prejudice as follows:

**ACKNOWLEDGMENT OF THE DECISION BY THE
BOARD OF PATENT APPEALS AND INTERFERENCES**

The Appellants hereby acknowledge the decision by the Board of Patent Appeals and Interferences ("Board") rendered July 21, 2005, in which all rejections of claims 1-47 were reversed. Appellants respectfully request that the application be passed to issue.

In view of the Board's mention (e.g., decision page 26) of Ramachandran (US 5,483,047), Appellants request that Ramachandran be placed on the list of references cited (form PTO-892).

Appellants respectfully traverse the comments by the Board that appear to be based on "opinion" (e.g., decision page 8, line 7; page 17, lines 8-9; page 20, lines 18-19; page 26, line 8), especially when the evidence of record does not offer support for such opinion. Further, Appellants respectfully submit that all features of a claim are to be considered and that each claim as a whole must be considered. For example, claim 1 recites that both the customer station and the SP station are "positioned inside of the building" and that their carrier delivery and receiving devices are "in operative connection."

With regard to the McClure reference, McClure has already been fully considered by the Examiner. Furthermore, Appellants *already* showed that the claims were allowable over the combination of McClure, Casale, and Bustos (as noted at page 11, last paragraph of the Supplemental Appeal Brief filed October 2, 2001). Thus, Appellants respectfully traverse the Board's "opinion" that the McClure reference was not fully considered.

Appellants also respectfully object to the accusation by the Board that "It is clear from the similarities of Fig. 5 of McClure to Fig. 8 of the present invention that appellants were well aware of McClure when the application was filed" (decision page 25, last paragraph). First, one of ordinary skill in the art would recognize that there is very little similarity between the Figures. Second,

Appellants' application was filed on July 7, 1997. McClure (along with five other references) was filed in an Information Disclosure Statement ("IDS") on October 21, 1998. These IDS references were first made available to Appellants in an International Search Report dated October 2, 1998 (from the USPTO) in the corresponding PCT Application. Why the Board would provide such a false statement regarding an issue that is not even at issue on appeal is unclear. However, the actions by the Board appear to point to an unwarranted bias against Appellants.

Appellants respectfully point out that the repeated imposition of new grounds of rejection in an effort to deny judicial review of a refusal to grant Appellants' application constitutes an abuse of agency authority. Such actions violate the Administrative Procedures Act, 5 U.S.C. § 701 *et seq.* Such agency action also violates the fundamental legal principle that an administrative agency may not avoid review of its actions by engaging in repetitive activity which does not remain in place long enough to enable judicial review. *Southern Pacific Terminal Co. v. Interstate Commerce Com.*, 219 U.S. 498, 55 L.Ed. 310, 31 S. Cr. 279 (1911).

As the Board decision was a complete reversal of the Examiner's rejection (MPEP § 1214.04), any further rejection should require approval by a Technology Center Director.

Appellants respectfully submit that the Application has been fully examined, the prior art more than adequately searched, and the rejections based on such art declared legally improper. Thus, allowance is respectfully requested.

Respectfully submitted,



Ralph E. Jocke Reg. No. 31,029
WALKER & JOCKE
231 South Broadway
Medina, Ohio 44256
(330) 721-0000